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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**Docket No. TSCA-07-2002-0187**

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is U and I Properties, L.L.C., 7793 Evergreen Dr., Cedar Hill, Missouri 63016.

Complainant's Allegations

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Count I

1. U and I Properties, L.L.C., ("Respondent") is a Missouri limited liability company.
2. For all periods of time relevant to the violation alleged herein, Respondent owned a residential property located at 5890 Delmar, Apt. 2W, St. Louis, Missouri (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
5. On or about July 1, 1999, Respondent entered into a rental agreement (the "Contract") with Tonya Kennedy for the lease of Respondent's Property for residential use.
6. As a result of the Contract described in Paragraph 5 above, Respondent became a "lessor", and Tonya Kennedy became a "lessee", as those terms are defined by 40 C.F.R. § 745.103.
7. Tonya Kennedy subsequently moved into the Property along with her five children.
8. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

9. Respondent did not provide an EPA-approved lead hazard information pamphlet to Tonya Kennedy prior to being obligated under the rental Contract described in Paragraph 5 above.

10. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Tonya Kennedy prior to being obligated under the rental Contract described in Paragraph 5 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

#### CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admits nor denies Complainant's factual allegations above.

2. Respondent waives its right to contest Complainant's allegations above, and its right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Although not required by TSCA, or any other federal, state, or local law, in settlement of this matter, Respondent agrees to conduct a lead abatement project on a residential property. The address of the property is 5345 Cabanne, Second Floor South, St. Louis, Missouri. The goal of the project is to reduce the possibility of future occupants being exposed to lead-based paint. As part of the work performed on the property, Respondent shall, at a minimum: replace seven (7) windows and

frames with new vinyl replacement windows and frames. Respondent agrees to obtain prior written approval from EPA if Respondent decides to modify the project in such a manner that the above description of work would not be satisfied. Respondent agrees that the abatement project shall only be performed by professionals certified by the State of Missouri to perform lead-based paint activities, as that term is defined in 40 C.F.R. § 745.223. Respondent agrees to follow all applicable state and federal laws when performing this abatement project. Respondent agrees that the abatement project shall be completed within one hundred eighty (180) days of the effective date of this Consent Agreement and Final Order. Within fourteen (14) days of completion of the abatement project, Respondent agrees to provide EPA with a notarized statement indicating that the abatement project has been completed, along with an accounting of expenses incurred on the project. Respondent agrees to include in the accounting statement a statement certifying that the expenses incurred and listed in the accounting statement are accurate and represent only those expenses for the abatement project. Respondent agrees not to claim this abatement project as a business expense on its federal, state, or local income tax returns and agree not to depreciate the costs on their tax returns.

6. Respondent consents to the issuance of the Final Order hereinafter recited and consent to the payment of a mitigated civil penalty in the amount of One Thousand Twenty-Five Dollars (\$1,025) to be paid within thirty (30) days of the effective date of the Final Order. Furthermore, Respondent consents to the stipulated penalty provision contained in Paragraph 2 of the Final Order.

7. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 6 above, or any stipulated penalties assessed pursuant to Paragraph 2 of the Final Order, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall

accrue thereon at the rate determined by the Secretary of the Treasury (five percent (5%)) per annum for the period January 1, 2002, through December 31, 2002) on the unpaid balance until such civil penalty and/or stipulated penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a five percent (5%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall undertake and complete the abatement project as set forth in Paragraph 5 of the Consent Agreement.
2. In the event that Respondent fails to undertake or complete the abatement project as set forth in Paragraph 5 of the Consent Agreement, Respondent shall pay a stipulated penalty in the amount of Three Thousand Seventy-Five Dollars (\$3,075). Such stipulated penalty shall become immediately due and payable within thirty (30) days of the scheduled completion date of the abatement project, which is set forth in Paragraph 5 of the Consent Agreement.
3. Respondent shall pay a mitigated civil penalty of One Thousand Twenty-Five Dollars (\$1,025) to be paid within thirty (30) days of the effective date of the Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251.

4. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Mike Gieryic  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

5. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT:  
U AND I PROPERTIES, L.L.C.

Date 7-8-02

By Louis Bourgeois  
Louis Bourgeois, member  
d/b/a U and I Properties, L.L.C.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 7/18/02

By William A. Spratlin  
for William A. Spratlin  
Director  
Air, RCRA, and Toxics Division

Date 7/23/02

By Mike Gieryic  
Mike Gieryic  
Assistant Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.

Robert L. Patrick  
Robert L. Patrick  
Regional Judicial Officer

Date July 30, 2002

IN THE MATTER OF U and I Properties, Inc., Respondent  
Docket No. TSCA-07-2002-0187

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Michael Gieryic  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

U and I Properties, L.L.C.  
7793 Evergreen Drive  
Cedar Hill, Missouri 63016

Dated: 7/31/02

  
Kathy Robinson  
Regional Hearing Clerk